

Formal Action #6350

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,

Petitioner,

v.

**HAYS IMPORTS, INC., a domestic
corporation doing business as HAYS
MITSUBISHI; HAYS HYUNDAI, INC.,
a domestic corporation doing business as
HAYS MAZDA, and HAYS NISSAN,
INC., a domestic corporation,
Respondents.**

PETITION

Charles W. Burson, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (hereinafter "the Division") and the Attorney General, pursuant to the Act, have investigated certain actions and practices of Hays Imports, Inc., a Tennessee corporation doing business as Hays Mitsubishi; Hays Hyundai, Inc., a Tennessee corporation doing business as Hays Mazda; and Hays Nissan, Inc., a Tennessee corporation (hereinafter "Respondents"). Upon completion of the investigation, the Division has determined that certain of Respondents' actions and practices more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-104(a), and further that such acts and practices constitute violations of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27) and various provisions of Tenn. Code Ann. § 47-18-120, the prize, gift and award statute.

2. Based upon their investigation of Respondents, the Division and the Attorney General allege the following:

(A) Respondents were at all times relevant to this Petition, in the business of promoting their businesses, namely various car dealerships that offer automobiles for sale to consumers in the State of Tennessee.

(B) In order to promote Respondents' automobiles to the public, Respondents mailed solicitations to consumers. Attached as Collective Exhibit A are true and exact copies of the solicitations that were the subject of the State's investigation.

(C) Some of the direct mail solicitations attached as collective Exhibit A offered various prizes, gifts or awards to consumers as an incentive to visit Respondents' car dealerships. For example, a chance to win "\$5,000" or "a Stanley screwdriver set or an Anchor Hocking microwave cookware set at no charge" were offered to consumers in Respondents' incentive offerings. However, these solicitations failed to clearly and conspicuously disclose the odds of winning the prizes immediately adjacent to the prizes, the verifiable retail value of some of the prizes, or other conditions, restrictions and limitations associated with the offerings, in violation of various provisions of the prize, gift and award statute, Tenn. Code Ann. § 47-18-120.

(D) One of Respondents' direct mail solicitation attached as part of Collective Exhibit A also promoted a "LOTTO" to consumers. This solicitation represented or implied to Tennessee consumers that a "lotto" or "lottery" was being conducted by Respondents, when in fact no lottery was being conducted and further, lotteries are illegal in the State of Tennessee.

(E) Another one of the direct mail solicitations promoted that consumers were "virtually pre-approved", when in fact the consumers had not cleared any special credit approval process and would be required to go through the same credit approvals as all other members of the public.

(F) Finally, one of the direct mail solicitations promoted a "\$39 Used Car Acquisition Event" by stating that "it's your chance to make the buy of a lifetime" and all the consumer had to do was "pay a \$39 acquisition fee and take over the payments of over \$1,000,000 worth of used vehicles", when in fact the consumer would not be "taking over the payments" of a previous owner, but rather financing the vehicle from the beginning as any other consumer would do if financing a used car. The only unique feature of the offering was that the consumer only had to pay a \$39.00 payment down.

(G) Respondents' conduct constitutes unfair and deceptive acts or practices in violation of the Tennessee Consumer Protection Act.

3. Respondents deny any wrongdoing. Respondents' position is explained more fully in Paragraph B of the Assurance of Voluntary Compliance submitted contemporaneously with this Petition.

4. Upon completion of its investigation, the Division requested the Attorney General to negotiate, and if possible to accept, an Assurance of Voluntary Compliance in accordance with the provisions set forth in Tenn. Code Ann. § 47-18-107.

5. The Attorney General entered into negotiations with Respondents and the parties have agreed to, and the Division has approved, the Assurance of Voluntary Compliance submitted contemporaneously with this Petition.

6. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

7. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 above, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays:

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.

2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.